



# Public Employees for Environmental Responsibility

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February 5, 2019

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

## **RE: FOIA REQUEST**

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information concerning EPA's criminal enforcement program. Specifically, we request the following:

1. Documents reflecting the number of Criminal Investigation Division (CID) agents in each of the ten regions and Headquarters, including status as full time or part time employees, during FY 2018 and FY2019, to the present;
2. A summary reflecting the percentage or rate of CID agent turnover (or retention) by year during Fiscal Year 2019 and FY 2019, to present, including the seniority level of departing agents;
3. Records tabulating or summarizing the number of cases opened by CID in each of the ten regions and Headquarters by year for FY 2018 and FY 2019 to the present, together with an indication of the alleged violations; and
4. Records tabulating or summarizing to the number of Department of Justice criminal referrals from CID, including U.S. Attorneys and Environmental Crimes Section attorneys, in each of the ten regions and headquarters by year from FY 2018 and FY 2019 to the present.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

*1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.*

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees.

*2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.*

The requested material would help the public understand the output of EPA’s criminal investigation program, as well as its workforce, including how they have changes during the past five years.

The request would also allow the public to understand whether CID is meeting the minimum number of agents required the U.S. Pollution Prosecution Act of 1990. In addition, this material will enable the public to see the relative EPA investment in criminal enforcement of anti-pollution laws.

As these topics are the explicit focus of this request, the requested material is directly informative in relation to the request.

*3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.*

The requested material concerns the level of federal criminal anti-pollution enforcement in every region of the United States. In addition, the material concerns enforcement of every major anti-pollution law. As such, the material would be informative to the public, at large.

The public at large is also interested in corporate malfeasance, particularly as it effects the public health and the environment. The general public also has a keen interest in whether EPA enforcement efforts and investments have slackened in recent months.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long history of attracting media and public attention to the internal workings of EPA, including the topic of this request.

*4. The disclosure must contribute “significantly” to public understanding of government operations or activities.*

The material requested reflects very basic indices of an enforcement program – the number of investigators, the number of cases opened and the number that may merit federal prosecution. This material is not publicly posted by EPA.

The requested materials also would allow the public to look at retention and attrition inside CID – two factors that help the public understand the health of this program. In addition, EPA has pursued buy-out and early retirement incentives. This information would enable the public to see what impact that development has had on CID force levels.

In short, the nature of the information should shed also direct light on the quality, strength and extent of criminal enforcement inside EPA.

*5. The extent to which disclosure will serve the requestor's commercial interest.*

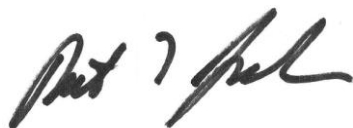
Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

*6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.*

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-4189 or [pjenkins@peer.org](mailto:pjenkins@peer.org) . I look forward to receiving the agency's final response within 20 working days.

Cordially,

A handwritten signature in black ink, appearing to read "Peter T. Jenkins".

Peter T. Jenkins  
Senior Counsel